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10/708,262	02/20/2004	Kenneth McKethan	014682.000003	2261

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EXAMINER	
YIGDALL, MICHAEL J	
ART UNIT	**PAPER NUMBER**
2192	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/708,262	MCKETHAN, KENNETH	
	Examiner	Art Unit	
	Michael J. Yigdall	2192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 February 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-46* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-46* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *20 February 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-46 are pending. A priority date of February 20, 2004 is considered.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 11-14, 16, 18-27, 29, 31-34 and 36-46 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

With respect to claim 11, the claim is directed to a "method to gauge and control churn of a project." However, the claimed subject matter lacks a practical application of the method that produces a useful, concrete and tangible result. As recited, the final result of the method is merely "determining an impact to the project." The impact to the project is strictly an abstraction; it is not used or conveyed in any manner that would amount to useful, concrete and tangible result. Accordingly, the claim lacks a practical application and is therefore directed to non-statutory subject matter. See MPEP § 2106. Dependent claims 11-14, 16 and 18-20 do not remedy claim 11.

With respect to claim 21, the claim is directed to a "system to gauge and control churn of a project." However, the claimed subject matter lacks a practical application of the system that produces a useful, concrete and tangible result. See the explanation presented above for claim 11. Dependent claims 22-27 and 29 do not remedy claim 21.

With respect to claim 31, the claim is directed to a "method of making a system to gauge and control churn of a project." However, the claimed subject matter lacks a practical application of the method that produces a useful, concrete and tangible result. See the explanation presented above for claim 11. Dependent claims 32-34 do not remedy claim 21.

With respect to claim 36, the claim is directed to a "computer-readable medium having computer-executable instructions for performing a method." However, the claimed subject matter is not limited to statutory embodiments. Applicant's definition of "computer-readable medium" includes, for example, a "stream of information" (specification, page 14, paragraph [0024]), and "paper or another suitable medium upon which the program may be printed" (page 15, paragraph [0024]). In such cases the claimed subject matter amounts to descriptive material *per se*, which is non-statutory subject matter. See MPEP § 2106.01. Note that signals and carrier waves, such as those that may "communicate or transport the program" (page 14, paragraph [0024]), do not fall within any category of statutory subject matter. See *Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility* (1300 OG 142). Accordingly, absent a clear disavowal of any non-statutory embodiments described in Applicant's specification, the claim is not limited to statutory subject matter. Dependent claims 37-46 do not remedy claim 36.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-12, 14-26 and 28-46 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,406,476 to Deziel, Jr. et al. ("Deziel").

With respect to claim 1, Deziel teaches a method to gauge and control churn of a project (see, for example, the abstract), comprising:

determining an estimated project churn (see, for example, column 15, lines 63-68, which shows determining an estimated delay in the project to account for shortfalls); and

allocating resources in response to the estimated project churn (see, for example, column 18, lines 64-68, which shows allocating resources in response to the estimate).

With respect to claim 2, the rejection of claim 1 is incorporated, and Deziel further teaches that determining the estimated project churn comprises collecting heuristic information on each task of the project requiring rework or modification in response to any potential project changes (see, for example, column 7, lines 58-67, which shows collecting heuristic information for every such activity or task of the project).

With respect to claim 3, the rejection of claim 2 is incorporated, and Deziel further teaches entering at least optimistic, pessimistic and expected time requirements to rework or modify each task of the project requiring rework or modification in response to any potential project changes (see, for example, column 8, lines 2-4, which shows entering optimistic, pessimistic and most likely times for every such activity or task).

With respect to claim 4, the method of claim 2 is incorporated, and Deziel further teaches performing a weighted average duration analysis for each task of the project requiring rework or modification in response to any potential project changes (see, for example, column 8, lines 24-26, which shows performing a weighted average duration analysis for every such activity or task).

With respect to claim 5, the rejection of claim 2 is incorporated, and Deziel further teaches determining an average time requirement to rework or modify each task of the project requiring rework or modification in response to any potential project changes (see, for example, column 8, lines 24-26, which shows determining average times for every such activity or task).

With respect to claim 6, the rejection of claim 5 is incorporated, and Deziel further teaches determining the average time requirement comprises averaging at least an optimistic, pessimistic and expected time requirement to rework or modify each task of the project requiring rework or modification in response to any potential project changes (see, for example, column 12, lines 52-66, which shows averaging optimistic, pessimistic and most likely times for every such activity or task).

With respect to claim 7, the rejection of claim 6 is incorporated, and Deziel further teaches entering a weight factor for each optimistic, pessimistic and expected time requirement (see, for example, column 8, lines 5-7, which shows entering a confidence weight factor for the times).

With respect to claim 8, the rejection of claim 7 is incorporated, and Deziel further teaches performing a weighted average duration analysis on the average time requirement for each task of the project requiring rework or modification in response to any potential project changes (see, for example, column 8, lines 24-26, which shows performing a weighted average duration analysis for every such activity or task).

With respect to claim 9, the rejection of claim 8 is incorporated, and Deziel further teaches determining an impact to the project in response to the weighted average duration analysis (see, for example, column 16, lines 3-16, which shows determining an impact to the project in response to the analysis).

With respect to claim 10, the rejection of claim 1 is incorporated, and Deziel further teaches tracking reworked tasks and time duration to complete each reworked task during the course of the project (see, for example, column 19, lines 19-28, which shows tracking activities or tasks during the course of the project).

With respect to claim 11, Deziel teaches a method to gauge and control churn of a project (see, for example, the abstract), comprising:

entering a project-specific task list (see, for example, column 7, lines 58-67, which shows entering an activity or task list for a project);

entering at least optimistic, pessimistic and expected time requirements to rework or modify each task of the project requiring rework or modification in response to any potential project changes (see, for example, column 8, lines 2-4, which shows entering optimistic, pessimistic and most likely times for every such activity or task);

determining an average time requirement to rework or modify each task requiring rework or modification in response to any potential project changes (see, for example, column 8, lines 24-26, which shows determining average times for every such activity or task);

performing a weighted average duration analysis on any tasks requiring rework or modification in response to any potential project changes (see, for example, column 8, lines 24-26, which shows performing a weighted average duration analysis for every such activity or task); and

determining an impact to the project in response to the weighted average duration analysis (see, for example, column 16, lines 3-16, which shows determining an impact to the project in response to the analysis).

With respect to claim 12, the rejection of claim 11 is incorporated, and Deziel further teaches collecting heuristic information on each task of the project to determine the optimistic, pessimistic and expected time requirement to rework or modify each task of the project requiring rework or modification in response to any potential project changes (see, for example, column 7, lines 58-67, which shows collecting heuristic information for every such activity or task of the project).

With respect to claim 14, the rejection of claim 11 is incorporated, and Deziel further teaches that determining the impact to the project comprises totaling times for all affected tasks from the weighted average duration analysis (see, for example, column 12, lines 25-33, which shows totaling the duration of every such activity or task).

With respect to claim 15, the rejection of claim 11 is incorporated, and Deziel further teaches allocating resources in response to the impact to the project (see, for example, column 18, lines 64-68, which shows allocating resources in response to the impact).

With respect to claim 16, the rejection of claim 11 is incorporated, and Deziel further teaches tracking reworked tasks and time duration to complete each reworked task during the course of the project (see, for example, column 19, lines 19-28, which shows tracking activities or tasks during the course of the project).

With respect to claim 17, the rejection of claim 11 is incorporated, and Deziel further teaches presenting the impact to the project to provide an early warning (see, for example, column 19, lines 19-28, which shows presenting the impact).

With respect to claim 18, the rejection of claim 11 is incorporated, and Deziel further teaches that entering the project-specific tasks comprises generating a graphical user interface for a user to enter the tasks (see, for example, column 8, lines 14-19, which shows generating such a graphical user interface).

With respect to claim 19, the rejection of claim 11 is incorporated, and Deziel further teaches that entering the at least optimistic, pessimistic and expected time requirements comprises generating a graphical user interface for a user to enter the time requirements (see, for example, column 8, lines 14-19, which shows generating such a graphical user interface).

With respect to claim 20, the rejection of claim 11 is incorporated, and Deziel further teaches entering a weighting factor for each of the optimistic, pessimistic and expected time

requirements to perform the weighted average duration analysis (see, for example, column 8, lines 5-7, which shows entering a confidence weighting factor for the times).

With respect to claim 21, Deziel teaches a system to gauge and control churn of a project (see, for example, the abstract), comprising:

an input device to enter heuristic information on each task of a project requiring rework or modification in response to any potential project changes (see, for example, column 7, lines 58-67, which shows entering heuristic information for every such activity or task of a project);

a processor (see, for example, CPU 10 in FIG. 1); and

an analysis program operable on the processor to determine an impact to the project in response to any potential project changes using the heuristic information (see, for example, column 16, lines 3-16, which shows determining an impact to the project using the information).

With respect to claim 22, the rejection of claim 21 is incorporated, and Deziel further teaches a display to present graphical user interfaces for entering the heuristic information and other information (see, for example, column 8, lines 14-19, which shows such graphical user interfaces).

With respect to claim 23, the rejection of claim 22 is incorporated, and Deziel further teaches a user interface generator to generate a graphical user interface displayable to a user on the display to enter a project-specific task list (see, for example, column 7, lines 58-67, which shows entering an activity or task list for the project).

With respect to claim 24, the rejection of claim 22 is incorporated, and Deziel further teaches a user interface generator to generate a graphical user interface displayable to a user to enter at least optimistic, pessimistic and expected time requirements to rework or modify each task of a project requiring rework or modification in response to any potential project changes (see, for example, column 8, lines 2-4, which shows entering optimistic, pessimistic and most likely times for every such activity or task).

With respect to claim 25, the rejection of claim 24 is incorporated, and Deziel further teaches that the user interface generator is adapted to generate a graphical user interface to enter a weighting factor for each of the optimistic, pessimistic and expected time requirements to perform a weighted average duration analysis (see, for example, column 8, lines 5-7, which shows entering a confidence weighting factor for the times, and column 8, lines 24-26, which shows performing a weighted average duration analysis).

With respect to claim 26, the rejection of claim 21 is incorporated, and Deziel further teaches that the analysis program comprises a weighted average duration analysis program (see, for example, column 8, lines 24-26, which shows performing a weighted average duration analysis).

With respect to claim 28, the rejection of claim 21 is incorporated, and Deziel further teaches means for presenting the impact to the project (see, for example, column 19, lines 19-28, which shows presenting the impact).

With respect to claim 29, the rejection of claim 21 is incorporated, and Deziel further teaches means to track reworked tasks and time duration to complete each reworked task during the course of the project (see, for example, column 19, lines 19-28, which shows tracking activities or tasks during the course of the project).

With respect to claim 30, the rejection of claim 21 is incorporated, and Deziel further teaches means to allocate resources in response to the impact to the project (see, for example, column 18, lines 64-68, which shows allocating resources in response to the impact).

With respect to claim 31, the claim is directed to a method of making a system that corresponds to the system of claim 21 (see the rejection of claim 21 above).

With respect to claim 32, the rejection of claim 31 is incorporated, and the elements recited in the claim correspond to those of claim 22 (see the rejection of claim 22 above).

With respect to claim 33, the rejection of claim 32 is incorporated, and the elements recited in the claim correspond to those of claims 23-25 (see the rejection of claims 23-25 above).

With respect to claim 34, the rejection of 31 is incorporated, and the elements recited in the claim correspond to those of claim 26 (see the rejection of claim 26 above).

With respect to claim 35, the rejection of claim 31 is incorporated, and the elements recited in the claim correspond to those of claim 28 (see the rejection of claim 28 above).

With respect to claim 36, the claim is directed to a computer-readable medium having computer-executable instructions for performing a method that corresponds to the method of claim 1 (see the rejection of claim 1 above).

With respect to claim 37, the rejection of claim 36 is incorporated, and the elements recited in the claim correspond to those of claim 2 (see the rejection of claim 2 above).

With respect to claim 38, the rejection of claim 37 is incorporated, and the elements recited in the claim correspond to those of claim 3 (see the rejection of claim 3 above).

With respect to claim 39, the rejection of claim 37 is incorporated, and the elements recited in the claim correspond to those of claim 4 (see the rejection of claim 4 above).

With respect to claim 40, the rejection of claim 37 is incorporated, and the elements recited in the claim correspond to those of claim 5 (see the rejection of claim 5 above).

With respect to claim 41, the rejection of claim 37 is incorporated, and the elements recited in the claim correspond to those of claim 6 (see the rejection of claim 6 above).

With respect to claim 42, the rejection of claim 41 is incorporated, and the elements recited in the claim correspond to those of claim 7 (see the rejection of claim 7 above).

With respect to claim 43, the rejection of claim 42 is incorporated, and the elements recited in the claim correspond to those of claim 8 (see the rejection of claim 8 above).

With respect to claim 44, the rejection of claim 36 is incorporated, and Deziel further teaches generating a graphical user interface for a user to enter a project-specific task list (see, for example, column 7, lines 58-67, which shows entering an activity or task list for the project).

With respect to claim 45, the rejection of 36 is incorporated, and the elements recited in the claim correspond to those of claim 3 (see the rejection of claim 3 above).

With respect to claim 46, the rejection of 45 is incorporated, and the elements recited in the claim correspond to those of claim 7 (see the rejection of claim 7 above).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 13 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deziel in view of 5,826,236 to Narimatsu et al. ("Narimatsu").

With respect to claim 13, the rejection of claim 11 is incorporated. Deziel does not expressly disclose that performing the weighted average duration analysis comprises performing a program evaluation and review technique (PERT).

However, in an analogous art, Narimatsu teaches performing a PERT calculation (see, for example, column 16, lines 44-56), so as to reduce scheduling time when allocating resources to processes or tasks (see, for example, column 10, lines 20-34).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the method of Deziel such that performing the weighted average duration analysis comprises performing a program evaluation and review technique (PERT), as Narimatsu suggests, so as to reduce scheduling time when allocating resources to the activities or tasks.

With respect to claim 27, the rejection of claim 26 is incorporated. Deziel does not expressly disclose that the analysis program comprises a programmed evaluation and review technique (PERT).

However, in an analogous art, Narimatsu teaches performing a PERT calculation (see, for example, column 16, lines 44-56), so as to reduce scheduling time when allocating resources to processes or tasks (see, for example, column 10, lines 20-34).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the system of Deziel such that the analysis program comprises a programmed evaluation and review technique (PERT), as Narimatsu suggests, so as to reduce scheduling time when allocating resources to the activities or tasks.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure (see the attached Notice of References Cited).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Yigdall whose telephone number is (571) 272-3707. The examiner can normally be reached on Monday through Friday from 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MY

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